

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF TEXAS
3 MARSHALL DIVISION
4 INTELLECTUAL VENTURES I LLC,) (
5 PLAINTIFF) (CIVIL ACTION NO.
6 VS.) (2:17-CV-577-JRG
7) (MARSHALL, TEXAS
8 T-MOBILE USA, INC., T-MOBILE) (
9 US, INC., ERICSSON INC., AND) (
10 TELEFONAKTIEBOLAGET LM) (
11 ERICSSON,) (FEBRUARY 7, 2019
12 DEFENDANTS) (12:54 P.M.

13 TRANSCRIPT OF JURY TRIAL
14 BEFORE THE HONORABLE JUDGE RODNEY GILSTRAP
15 UNITED STATES CHIEF DISTRICT JUDGE

16 APPEARANCES:

17 FOR THE PLAINTIFF: Mr. T. John Ward, Jr.
18 Ms. Claire A. Henry
19 Ms. Andrea L. Fair
20 Mr. Wesley Hill
WARD, SMITH & HILL, PLLC
1507 Bill Owens Parkway
Longview, Texas 75604
21 COURT REPORTER: Ms. Shelly Holmes, CSR, TCRR
22 Official Reporter
23 United States District Court
24 Eastern District of Texas
Marshall Division
100 E. Houston Street
Marshall, Texas 75670

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produced on a CAT system.)

1 FOR THE PLAINTIFF:

Mr. Martin J. Black
Mr. Kevin M. Flannery
DECHERT LLP
Cira Centre
2929 Arch Street
Philadelphia, Pennsylvania 19104

Mr. Joseph M. Abraham
Mr. Timothy F. Dewberry
Mr. Joshua J. Yi
Mr. Jacob R. Porter
DECHERT LLP
300 West Sixth Street
Suite 2010
Austin, Texas 78701

Ms. Nisha N. Patel
Mr. Ryan T. Banks
DECHERT LLP
2440 W. El Camino Real
Suite 700
Mountain View, California 94040

13 FOR THE DEFENDANTS:

Mr. Douglas M. Kubehl
Mr. Jonathan B. Rubenstein
Mr. Jeffery S. Becker
BAKER BOTTS LLP
2001 Ross Avenue
Dallas, Texas 75201

Ms. Melissa R. Smith
GILLAM & SMITH LLP
303 South Washington Avenue
Marshall, Texas 75670

Mr. Asim M. Bhansali
KWUN BHANSALI LAZARUS LLP
555 Montgomery Street
Suite 750
San Francisco, California 94111

1 (Jury out.)

2 COURT SECURITY OFFICER: All rise.

3 THE COURT: Be seated, please.

4 Mr. Ward, are you prepared to go forward with
5 cross-examination?

6 MR. WARD: Yes, Your Honor.

7 THE COURT: You may go to the podium and prepare.
8 I see Dr. Becker is back on the witness stand.

9 Let's bring in the jury.

10 COURT SECURITY OFFICER: All rise.

11 (Jury in.)

12 THE COURT: Please be seated.

13 When we broke for lunch, the Defendants had asked
14 the witness. Having completed their direct examination of
15 Dr. Becker, we'll now proceed with the Plaintiff's cross
16 examination.

17 Mr. Ward, you may proceed.

18 MR. WARD: Thank you, Your Honor.

19 STEPHEN BECKER, Ph.D., DEFENDANTS' WITNESS, PREVIOUSLY SWORN

20 CROSS-EXAMINATION

21 BY MR. WARD:

22 Q. Good afternoon, Dr. Becker.

23 A. Good afternoon.

24 Q. You and I have met before, have we not?

25 A. We have.

1 Q. We've done this a few times?

2 A. A couple.

3 Q. Not in this case, other cases.

4 A. Yes.

5 MR. WARD: Let's start out with Bratic Slide No. 5.

6 Q. (By Mr. Ward) Did you show a slide with the patent
7 damages statute on it?

8 A. I didn't.

9 Q. Okay. The patent damages statute, as Mr. Bratic told
10 us, says: Upon finding for the complaint, the Court shall
11 award the claimant damages adequate to compensate for the
12 infringement, but in no event less than a reasonable
13 royalty -- and I like to highlight this next part.

14 MR. WARD: Mr. Horseman?

15 Q. (By Mr. Ward) -- For the use made of the invention by
16 the infringer.

17 Did I read that correctly?

18 A. Yes.

19 Q. You're very familiar with this statute, aren't you?

20 A. I am.

21 Q. And it doesn't say for the return on investment within
22 the company owned by the Plaintiff.

23 A. Correct. It does not say that.

24 MR. WARD: Thank you, Mr. Horseman.

25 Q. (By Mr. Ward) And so we are supposed to focus on the

1 use of the infringing technology made by the infringer,
2 correct?

3 A. It's -- that's an element of the analysis, yes.

4 Q. I mean, that's what the statute says, correct?

5 A. It's the -- it is an amount of compensation that is for
6 that use, but there's a lot that goes into figuring out
7 what's the reasonable amount of compensation.

8 Q. Fair enough.

9 Now, the -- you said there's a range. 110,000 to
10 1.4 million.

11 A. Correct.

12 Q. Have you ever bought a house, Dr. Becker?

13 A. Yes.

14 Q. Now, if you went to the bank and you said, I found a
15 house, and they want \$1.5 million for it, you'd have to go
16 get an appraisal if you wanted a loan, right?

17 A. Yes.

18 Q. Big loan.

19 A. Yes.

20 Q. And can you imagine, if you showed back up at your bank,
21 and your appraiser said, the house is worth between 100,000
22 and 1.4 million, what's the bank going to say?

23 A. They're going to ask what the assumptions are that went
24 into the 110 or the 1.4, which may be very different.

25 Q. Do you think the bank's going to say, well, we need

1 something that tells us what the house is worth; we can't
2 have this range of maybe it's 110,000 or maybe it's 12 times
3 that much; they're going to need a more specific answer,
4 correct?

5 A. Correct.

6 Q. You're here to testify once. We're in the evidence
7 today. You understand that, don't you?

8 A. Yes.

9 Q. Will you tell the jury what the number is that you think
10 is in that range that you think is the real number?

11 A. Well, I think at --at the end of the day, I would say
12 that it's not more than 1.4 million. I've explained why I
13 think there are circumstances under which it would be
14 reasonable to accept 110,000. But at the end of the day, if
15 I had to pick a single number, I would say it's not more
16 than 1.4 million.

17 Q. But you said the 1.4 million included -- would include a
18 license to the entire portfolio?

19 A. No. No, it's only for these three patents.

20 Q. Right. But I thought you said that when doing your
21 analysis -- and I said entire portfolio, I'm sorry. That
22 was a -- a bad statement.

23 The Malibu -- what you call the Malibu portfolio,
24 right?

25 A. I'm not sure I understand the question. I know we've

1 talked about the Malibu portfolio is the thing that the
2 three patents-in-suit are in.

3 Q. Okay. So you've limited it to that -- those three
4 patents would be 1.4 million?

5 A. Correct.

6 Q. And so are you telling the jury that the number really
7 is 1.4 million in your analysis if you had to pick a number?

8 A. For those -- just those three patents, if there was only
9 one number, I would say 1.4 million.

10 Q. And that's because you know the 110,000 is pretty
11 ridiculous, right?

12 A. I do not think it's ridiculous. I think it's -- it is
13 the one number we have that you can say is consistent with
14 how IV has, in fact, licensed the patents over -- these
15 three patents over and over again.

16 But I recognize that there are other factors that
17 go into the hypothetical negotiation, and that's why I think
18 it's reasonable to be at 1.4 million.

19 Q. Now, Dr. Becker, like all the experts in this case,
20 you're charging for your time, are you not?

21 A. Yes.

22 Q. And how much are you charging for your time?

23 A. My rate is \$625.00 an hour.

24 Q. And you've had other people in your firm work on this
25 file, have you not?

1 A. Yes.

2 Q. How much has your firm billed up to today for the work
3 that it's done on this matter?

4 A. I don't have an exact figure. I'd say it's north of --
5 I'd say it's probably in the couple hundred thousand
6 dollars.

7 Q. So a couple hundred thousand dollars for your analysis?

8 A. Yes.

9 Q. You were here for Dr. Acampora, couple hundred thousand
10 for him?

11 A. Yes.

12 Q. And then Dr. Wicker, couple hundred thousand for him?

13 A. Yes.

14 Q. Now, you also told the jury that during the last 20
15 years, you've done a lot of work in this area?

16 A. Yes.

17 Q. And I think you said you worked 50/50 pretty much over
18 those 20 years for Plaintiffs and Defendants?

19 A. Yes.

20 Q. That's not exactly what the breakout would be if we just
21 looked at the last three to five years, is it?

22 A. No.

23 Q. You've looked at that, haven't you?

24 A. I haven't looked at it recently, but it -- it ebbs and
25 flows. And I think in the last couple years, it's --

1 wouldn't be exactly 50/50.

2 Q. Well, just in the last five years, it's -- you've got 60
3 cases listed in your CV, don't you?

4 A. 60 cases overall or 60 patent cases?

5 Q. There's 60 cases --

6 A. Oh, sure, yeah.

7 Q. And 44 of those 60, would it surprise you, they're
8 working for the defense?

9 A. Oh, not a bit because my answer about the 50/50 was on
10 patent cases.

11 Q. Okay.

12 A. And that 60, I have one specific field that I work in
13 where I -- all the work I do is on the defense side. It has
14 nothing to do with patents.

15 Q. At least what we can see in your expert report, you've
16 got 60 cases listed?

17 A. Yes.

18 Q. And 75 percent of them roughly are working for the
19 defense?

20 A. Sure.

21 Q. And this is your expert report, right?

22 A. Yes.

23 Q. And like all the experts, you had to provide us with a
24 report with all your opinions?

25 A. Yes.

1 Q. And we get a chance to take your deposition and ask you
2 questions about that report?

3 A. Correct.

4 Q. Let's talk about the hypothetical negotiation. You know
5 -- you know what I'm talking about?

6 A. Yes, I do.

7 Q. You've analyzed many patents cases, and you've done this
8 hypothetical negotiation, correct?

9 A. Yes.

10 Q. And you talked about T-Mobile's preference for a lump
11 sum as part of that analysis?

12 A. Yes.

13 Q. But in the hypothetical negotiation, doesn't it have a
14 different wrinkle here?

15 A. I'm not sure what you mean.

16 Q. Well, I didn't hear you talk about the indemnity
17 agreement between T-Mobile and Ericsson.

18 A. I -- I don't think the -- any indemnity agreement, if it
19 exists, is relevant to the analysis.

20 Q. You don't think it's relevant to determine the weight of
21 the credibility you give to the people that you interview?

22 A. I'm not sure what you mean.

23 Q. Well, didn't you interview folks for Ericsson and
24 T-Mobile when you were trying to figure out what this
25 technology was worth?

1 A. Yes.

2 Q. And do you think that Ericsson would have a motivation
3 to minimize that value if they're having to pay all the
4 freight for T-Mobile's use?

5 A. Well, I can't speak to their motivations. Certainly the
6 people that I talked to, I found them to be, you know,
7 honestly and, I think, fairly answer my questions. I wasn't
8 asking them to -- you know, for them to shade things one way
9 or the other.

10 Q. I wasn't -- I didn't mean to imply that you had. So you
11 understand that?

12 A. Okay. I just wasn't sure. It sounded like you were
13 suggesting that they were sort of pushing things down just
14 because they're having to pay if there's damages in this
15 case.

16 Q. Well, I didn't see the indemnity agreement referenced
17 anywhere in your report?

18 A. No, it's not.

19 Q. Did you review it?

20 A. I don't think I've even seen it. It's not relevant to
21 my analysis.

22 Q. It's not relevant to your analysis -- is this what
23 you're telling the jury, it's not relevant -- when you go
24 talk to someone who is potentially having to pay damages,
25 it's not relevant to determine if they might have a

1 motivation to angle for a lower number?

2 A. I don't think so, no.

3 Q. Because you understand this is a method claim, correct?

4 A. I understand that there are method claims asserted here.

5 Q. And you understand, as the Plaintiff, we have focused on
6 the use of the technology by T-Mobile?

7 A. I -- I understand that. I've been here this week.

8 Q. Is that what you did in your analysis?

9 A. The use of the technology is one factor that is -- that
10 factors into my analysis.

11 MR. WARD: Could we see Becker Slide 20?

12 Q. (By Mr. Ward) Now, this is one of your slides; is that
13 right, Dr. Becker?

14 A. It is.

15 Q. And this was the cost of ownership that you pulled
16 from -- it looks like a couple of Defendants' exhibits --
17 or, I'm sorry, Defendants' Exhibits 485?

18 A. Yes.

19 Q. And you've got the purchase price --

20 A. Yes.

21 Q. -- of 900,000?

22 A. Yes.

23 Q. And I think you said that was a -- one of the key
24 components or the starting point in this analysis?

25 A. It's -- it's a starting point for some -- yeah, I think

1 it's fair that the -- the real starting point is that
2 estimated total cost of ownership, but I understand that
3 when IV calculates those, they start with the purchase
4 price.

5 Q. And then you've got maintenance fees for U.S. patents in
6 there?

7 A. Yes.

8 Q. I say you've got. It's in the document, correct?

9 A. Yes.

10 Q. And prosecution costs and lifetime maintenance fees.

11 That's what the document says, right?

12 A. Yes.

13 Q. And then prosecution costs, lifetime annuities for
14 existing international applications?

15 A. Yes.

16 Q. Where are expert fees at trial?

17 A. I don't think they're in this -- this is not -- it
18 doesn't appear to me that when IV is -- the way it measures
19 things, it does not take that into account as the total cost
20 of ownership.

21 Q. Well, do you know when this document was prepared?

22 A. This was -- this particular document is prepared at the
23 time they did the acquisition.

24 Q. 2004, right?

25 A. Yes.

1 Q. Before anyone's using Voice over LTE, right?

2 A. Sure.

3 Q. And when they acquired the portfolio, two of the patents
4 in this suit didn't exist, did they?

5 A. I think they -- that's true. They were still
6 applications.

7 Q. There's nothing in these costs for attorneys at trial,
8 is there?

9 A. No.

10 Q. Did you not think those -- if you were going to
11 calculate total estimated cost of ownership, that you'd want
12 to include that when you were trying to determine a fair
13 amount of what it would cost -- what these patents cost IV?

14 A. Well, I think the -- no, I don't think that that -- that
15 the legal fees of the type that are being expended here
16 would reasonably go into this particular total cost --
17 estimated cost of ownership, because this is the way IV
18 measures things.

19 Q. This is the way IV measures internally, correct?

20 A. Yes.

21 Q. This is not the way they've presented their damages
22 model at this trial, is it?

23 A. Oh, certainly not.

24 Q. This is the way you chose to calculate damages, correct?

25 A. Well, this is a -- an ingredient in the way I think it

1 is reasonable to arrive at a royalty in this case.

2 Q. That you think is reasonable, correct?

3 A. Yes, but it's consistent with their documents.

4 Q. It's consistent with their documents. Is that what you
5 said?

6 A. Yes.

7 Q. And so you've seen documents where IV does calculations
8 of what infringers owe it based upon its total cost of
9 ownership of patents?

10 A. I think it's broader than that. They -- the documents
11 support that the total cost of ownership is a factor in
12 their measuring the performance of their business model that
13 is -- their whole model is generating revenue from people
14 who they think are using their technology.

15 MR. WARD: Objection, nonresponsive.

16 THE COURT: I think it's broader than that was
17 responsive to the question. I'll allow that. The remainder
18 of the answer I'll strike as nonresponsive.

19 Let's continue.

20 Q. (By Mr. Ward) You have focused on this original
21 purchase price, at least in part, have you not?

22 A. Yes.

23 Q. And, in fact, you talked about that purchase price in
24 your report, didn't you?

25 A. Yes.

1 Q. And you talked about how IV bought these patents at an
2 auction, correct?

3 A. Yes.

4 MR. WARD: Let's look at Becker report at Page 42.

5 And just highlight that top paragraph, please, sir,
6 Mr. Horseman.

7 Q. (By Mr. Ward) And I've got your entire report, if you
8 want to see it, Dr. Becker, but I really want to focus on
9 this section here.

10 It says: Because the subject of the asset sales
11 are fairly specialized within industries.

12 Do you see that?

13 A. Yes.

14 Q. Will you take a moment just to familiarize yourself with
15 it?

16 A. Okay.

17 Q. And would you agree with me that you felt like, because
18 you viewed IV as an insider in this business, that it maybe
19 placed a higher value on this purchase than an outsider
20 would have?

21 A. Yes. Than other potential bidders, yes.

22 Q. And, in fact, you said: This appears to have been the
23 case in that IV's primary competition in the bidding was the
24 lead inventor.

25 A. Yes.

1 Q. That was your belief --

2 A. Yes.

3 Q. -- correct?

4 And let's look at what you cite, Footnote 251. You
5 cite the deposition of Peter Detkin, March 6th, 2017,
6 Exhibit 10.

7 A. All right.

8 Q. Have you reviewed that document recently?

9 A. Not recently, no.

10 Q. Do you think you might have been mistaken about who the
11 primary competition was in that auction?

12 A. Without looking -- it's been quite a while since I've
13 looked at that document. I may be --

14 Q. All right. Let's look at it.

15 A. Okay.

16 MR. WARD: Mr. Horseman, can we pull up Exhibit 10
17 from Detkin.

18 I tell you what, just give me the ELMO, please,
19 ma'am. I've got it here. Thank you.

20 Q. (By Mr. Ward) Does that look like the exhibit that you
21 were relying on, Dr. Becker?

22 A. Yes.

23 Q. And we can go down in the string, but May 17th, 2004,
24 that was the time of the acquisition, was it not?

25 A. Yes.

1 Q. And it says: We got these patents this morning at
2 auction for 900,000.

3 A. Correct.

4 Q. In addition to the five issued patents, I learned late
5 last week that there are many pending apps, about 10.
6 Unclear how many are still alive, but it's the majority.

7 A. Okay.

8 Q. You see that?

9 A. Yes.

10 Q. So would you agree that at least at the time of the
11 purchase, it appears that IV was not even aware of the
12 applications that resulted in the patents-in-suit?

13 A. Well, Mr. Detkin appears to be saying that he wasn't --
14 you know, when he said, I learned late last week, I just
15 don't know the timing as to whether that was before or after
16 the -- the auction had ended.

17 Q. All right. Can we look at that in just a minute?

18 A. (No response.)

19 Q. Is it okay if we look at that issue in a minute?

20 A. Sure.

21 Q. Because that next paragraph says: After the bidding,
22 the lead inventor went to our rep to offer his services and
23 offered lots of info.

24 You see that?

25 A. I see that, yes.

1 Q. And then the -- the last sentence in that preceding
2 paragraph said: Primary competition in bidding was from the
3 former CEO of the company who had put together a consortium
4 of investors to try to buy the patents.

5 You see that?

6 A. I do.

7 Q. And so did you believe that Dr. Jorgensen was the CEO
8 when you wrote the paragraph that said the primary
9 competition was the inventor?

10 A. I'm not -- you know, I may have inferred that.
11 I certainly understood that the competition was from the
12 former CEO of the company. This is the document I'm relying
13 on, and that's why I said that it was industry insiders who
14 would be the -- who were apparently the competition in this
15 case.

16 Q. You understand that Dr. Jorgensen's the CTO.

17 A. Correct.

18 Q. Right. Not the CEO.

19 A. All right.

20 Q. I'm not faulting you for missing that, but it was
21 somebody other than Dr. Jorgensen who was trying to bid
22 against IV for the patents.

23 A. Oh, sure. I'll -- I'll give you that. It doesn't
24 change. It actually confirms what that paragraph in my
25 report was saying, but I'll give you the correction.

1 Q. If we go down -- let's -- I've got to scroll down.

2 If we look down at the email dated April the 8th,
3 2004, do you see that?

4 A. Yes.

5 Q. And it's -- it's from Edward Jung or Young to Peter
6 Detkin, Nathan Myhrvold, and Greg Gorder.

7 Do you see that?

8 A. I see that.

9 Q. And it says: These are worth buying.

10 A. I see that.

11 Q. And then if we scroll up to the next -- we read these
12 emails when they're printed from the bottom to the top,
13 right?

14 A. Yes.

15 Q. And then there's a response on April 8th, and you see
16 the response says: Unfortunately, it's not that easy.
17 These will be sold at auction along with a bunch of other
18 assets, and I don't have a clue how high the bidding will
19 get. So we have to decide how high we are willing to go.
20 1 million? 2 million?

21 Do you see that?

22 A. Yes.

23 Q. So does it appear there was some internal discussion
24 within IV about how high do we go in the bidding?

25 A. Sure. I think that's the case at any auction.

1 Q. And the next entry looks like Mr. Jung says 1 million.

2 A. Yes.

3 Q. So that looks like the authority that was given for the
4 auction, correct?

5 A. Appears to be, yes.

6 Q. And that was on April the 8th, 2004.

7 A. Okay.

8 Q. And so in between the time -- at least according to this
9 email, would you agree with me that in between the time that
10 the authority to purchase for 1 million was given and the
11 time that the patents were purchased, Mr. Detkin appears to
12 have discovered that there were some pending apps?

13 A. Sure. That looks like that -- I mean, if I look down,
14 he clearly understood back on April 8th that there were a --
15 a bunch of other assets, and then it looks like by
16 May 17th, he's delved into it further and is now saying that
17 he's focused on the pending applications.

18 Q. Does it appear to you that when they gave the authority
19 of 1 million, at least according to this email and according
20 to Mr. Detkin, he wasn't aware of the pending apps?

21 A. I really can't say. He may or may not have been.

22 Q. But we know for sure that when the purchase was made,
23 the '517 and '206 patents didn't exist?

24 A. They hadn't issued. The applications were pending, but
25 they didn't exist. The patents hadn't issued.

1 Q. What's worth more typically, Dr. Becker, a patent or a
2 patent application?

3 A. A patent, once it's issued.

4 Q. And so at the time they made this purchase, there was
5 one issued patent in this suit, and that's the '629,
6 correct?

7 A. Yes.

8 Q. You recall your testimony about the 18 Ericsson patents
9 that Mr. Bratic used in his valuation?

10 A. Yes.

11 Q. You were present for Ms. Chen's testimony, correct --

12 A. Yes.

13 Q. -- where she confirmed that others within Ericsson
14 referred to these 18 charted patents as representative?

15 A. Sure.

16 Q. And you're the last witness for the defense, correct?

17 A. I don't know. I think so.

18 Q. I think so, too, but do you know of anyone else?

19 A. I don't know. It's not my call.

20 Q. Do you know of anyone who's coming to testify as to the
21 value of any other patents in Ericsson's portfolio as
22 opposed to these 18?

23 A. Beyond what Ms. Chen has already said, no, I don't know
24 of anybody.

25 Q. Nothing stopped Ericsson from doing its own valuation

1 for this case, did it?

2 A. No.

3 Q. Did you see any expert who issued a report that said
4 those 18 patents had a different value -- technical value
5 than what Dr. Chrissan said?

6 A. No.

7 Q. Ericsson certainly had the ability -- the ability to
8 challenge that, didn't they?

9 A. Well, I -- my recollection is that Dr. Wicker's report
10 addressed the question of whether he believed that
11 Dr. Chrissan's technical valuation analysis was even
12 reliable.

13 So I -- I do recall that they have a technical
14 expert who at least, based on my discussion with him, felt
15 that the Chrissan analysis, even within the 18, was not
16 really a reliable way to come up with the comparison.

17 But beyond that, nobody has -- that I'm aware of
18 has -- other than -- certainly Dr. Chrissan didn't look
19 beyond the 18.

20 Q. Is the answer to my question that, no, you're not aware
21 of anyone at Ericsson who's going to provide an analysis of
22 the value of any other patents in its portfolio to this
23 jury?

24 A. Other than the 18?

25 Q. Correct.

1 A. Not beyond Ms. Chen saying that she believes that -- you
2 know, what she said about it. I mean, I don't need to
3 recharacterize her testimony.

4 Q. Have you ever heard that saying about it takes a
5 carpenter to build a barn and any old mule can kick it down?

6 A. Yes.

7 Q. You certainly weren't provided any licenses from
8 Ericsson where they had paid inventors for a license to
9 their patents, correct?

10 A. You know, we had a bunch of Ericsson licenses that
11 I looked at, and some of those were cross-licenses where
12 Ericsson was -- you know, I just don't know how to answer
13 that. I'd have to go back and look at the details of the
14 licenses that were provided.

15 Q. Well, Ms. Chen just testified. You heard her, didn't
16 you?

17 A. Yes.

18 Q. And did you hear her testify that it was extremely rare
19 for them to have -- them, being Ericsson, to have an inbound
20 license with an individual inventor where they paid for a
21 license to an individual inventor's patents?

22 A. Sure. I do recall that testimony, that it's -- it's
23 rare for Ericsson to -- they just haven't had the
24 circumstance where they've licensed just sort of only
25 inbound small number of patents with an individual inventor.

1 That just doesn't happen much in the industry.

2 Q. In their long and storied history, their being Ericsson,
3 there's not a single license in this case where Ericsson has
4 paid an inventor for a license to any technology?

5 A. I'm -- I'm only working with the documents in this case,
6 and there's certainly -- I'm not aware of one like that that
7 has been produced in this case. Whether in their long and
8 storied history they've done that, I have no idea.

9 Q. There's not any evidence in this case of one, is there,
10 Dr. Becker?

11 A. Well, sure. To say there's not evidence in this case,
12 that's true. Whether that means that they've never done it,
13 we're -- we're not seeing the totality of their long and
14 storied history here.

15 MR. WARD: Objection, nonresponsive.

16 THE COURT: The portion of the answer where he
17 says, "well, sure. To say that there's not evidence in this
18 case, that's true," that's responsive to the question. The
19 remainder is nonresponsive, and I'll strike it as I sustain
20 the objection.

21 And, Dr. Becker, I'll ask you to limit your answers
22 to the questions asked.

23 THE WITNESS: Yes, Your Honor.

24 THE COURT: Mr. Rubenstein is going to get to ask
25 you more questions, as you understand. So please limit your

1 answers to Mr. Ward's questions at this point.

2 All right. Let's proceed.

3 Q. (By Mr. Ward) Both -- both sides in this case have an
4 opportunity to present evidence, correct?

5 A. Yes.

6 Q. And to have you review it?

7 A. Yes.

8 Q. And you didn't review any licenses -- Ericsson didn't
9 ask you to review any licenses that it had paid for a
10 license fee with an individual inventor?

11 A. Not that I recall.

12 Q. Nor did T-Mobile, did they?

13 A. Not that I recall, no. There may be, I just don't have
14 that -- there's a long list of license agreements. I don't
15 recall any.

16 Q. Certainly nothing in the presentation that you gave this
17 jury about a license that T-Mobile had taken with an
18 individual inventor?

19 A. That's true.

20 Q. In fact, there's not evidence of any license in this
21 case that you've relied upon where Ericsson or T-Mobile has
22 paid money to anyone outside the company that you're relying
23 upon?

24 A. That's true.

25 Q. You recall your direct testimony about R allocations?

1 A. Yes.

2 Q. A lot of testimony about those R allocations, right?

3 A. Yes.

4 Q. That was something that you really focused on?

5 A. I think that's fair. It's an important part of my
6 analysis.

7 Q. In your review of all the documents, the depositions,
8 the testimony of the witnesses, did you see anything that
9 would indicate that IV has ever approached a potential
10 licensee and said: Here's our internal R allocations, we
11 want you to pay us licensing fees according to how we
12 allocate funds among our inventors?

13 A. No, I haven't seen a circumstance like that.

14 Q. Not one, was there?

15 A. No.

16 Q. The R allocations are what IV uses internally, correct?

17 A. I disagree with that.

18 Q. They use them with potential investors?

19 A. They do.

20 Q. But not with potential licensees when negotiating
21 licenses, do they?

22 A. I disagree with that.

23 Q. Well, the R allocations spread value from a license
24 across potentially every patent in the portfolio, don't
25 they?

1 A. They do. They -- I think it's every -- yes.

2 Q. So a license to IV's patents might be with a tech
3 company?

4 A. Correct.

5 Q. And that tech company might get a -- a license to a
6 subset of patents that are directly applicable to what that
7 tech company is doing, right?

8 A. True.

9 Q. And then they might get a bunch of licenses that read on
10 automobile engines or tires or wheels, right?

11 A. Sure. As part of the portfolio license, that's true.

12 Q. And then IV, because it has investors, would have to
13 allocate a portion of those license fees to unrelated
14 technologies, unrelated patents, correct?

15 A. They do, that's true.

16 Q. Because that's their deal with their investors, correct?

17 A. Yes.

18 Q. But it's your opinion in this case, IV would sit in a
19 room in the hypothetical negotiation with T-Mobile and
20 Ericsson, and they'd say, okay, T-Mobile, you admit that our
21 patents are infringed and valid, right?

22 A. Right.

23 Q. And here are our R allocations that we want to
24 use -- or we want you to use to determine how much money
25 you owe us?

1 A. That's not what I'm saying in my -- in my work.

2 Q. You're saying that they would use them, though, in this
3 hypothetical negotiation to allocate how much they think
4 these patents are worth, they being T-Mobile and Ericsson.

5 A. No. I think the -- that's not what I'm saying.

6 Q. Okay. You did look at lots of license agreements that
7 IV had, correct?

8 A. Right.

9 Q. And you looked at the Ericsson licenses that Mr. Bratic
10 relied upon.

11 A. Yes.

12 Q. But you determined that none of the licenses, whether
13 they're Ericsson licenses, T-Mobile licenses, IV licenses,
14 that none of them were relevant to your calculations.

15 A. In terms of the overall license agreements that I --
16 that's true. I think they're -- my analysis depends in part
17 on the results of the IV licensing activity.

18 Q. You did not rely upon, though, a single license from
19 Ericsson or T-Mobile in determining that damages owed in
20 this case are between 110,000 and 1.4 million --

21 A. Correct.

22 Q. -- did you?

23 A. Correct.

24 Q. Would IV have had access to T-Mobile's internal
25 documents at this hypothetical negotiation?

1 A. I think they would be aware of the same sort of open
2 book, cards on the table. They'd be aware of anything
3 internal to T-Mobile or Ericsson that was relevant to the
4 negotiation.

5 Q. Well, you understand that IV says that VoLTE on
6 T-Mobile's network doesn't work as efficiently as it does
7 without the patents-in-suit.

8 A. Sure. I understand that's -- that's IV's technical
9 position in this case.

10 Q. And you've got to assume infringement in your analysis,
11 don't you?

12 A. I do have to assume infringement.

13 Q. And so IV, at this hypothetical negotiation, would have
14 been aware that internally, Sprint was saying it was running
15 out of spectrum.

16 A. Did you mean to say Sprint?

17 Q. No. T-Mobile.

18 A. Okay.

19 Q. They would have known that T-Mobile was running out of
20 spectrum in 2014/2015.

21 A. Yes.

22 Q. And it's common knowledge that spectrum costs billions
23 and billions of dollars, correct?

24 A. For overall spectrum costs, yes, they're expensive.

25 Q. Well, did you review T-Mobile's 10-Ks?

1 A. I've seen those, yes.

2 Q. And you've seen that they were acquiring spectrum back
3 at this time, weren't they?

4 A. Sure. Every carrier was.

5 Q. And they were spending billions of dollars to do it,
6 weren't they?

7 A. I think, yes, every carrier was.

8 Q. T-Mobile was --

9 A. Yes.

10 Q. -- weren't they?

11 A. Yes.

12 MR. WARD: And could we see PX-1396, Mr. Horseman?

13 And let's go to Page 9.

14 Q. (By Mr. Ward) And you've seen this document during this
15 trial at least, haven't you?

16 A. Yes, sir.

17 Q. And did you review it when you were preparing your
18 opinions in your reports?

19 A. I don't recall.

20 Q. You don't know if you saw this before you signed your
21 report?

22 A. I -- I don't know. It -- there were -- I literally had
23 thousands of documents, so I don't -- I don't remember.

24 Q. At least you see that internally spectrum was saying,
25 "Why VoLTE?"

1 A. Yes, sir, I see that.

2 Q. And then it says: Technically and economically
3 superior.

4 A. Yes.

5 Q. And then: VoLTE only voice technology for 700 megahertz
6 and critical for us getting the 300 million covered pops in
7 2015.

8 Do you see that?

9 A. I do.

10 Q. And do you see down there at the bottom that LTE radio
11 technology, three times more efficient than HSPA?

12 A. Yes.

13 Q. Avoids 50 million in HSPA investment in 2015 alone?

14 A. I do see that statement, yes.

15 Q. Is this the first time you're seeing this document --

16 A. No.

17 Q. -- Dr. Becker?

18 A. No. I don't believe it -- certainly it's not the first
19 time I've seen it because I saw it earlier in this week.

20 Q. Is this the first time you saw it was during this trial?

21 A. I don't recall.

22 Q. Maybe?

23 A. I really can't say. It's been -- I've looked at a lot
24 of documents.

25 Q. It's certainly not cited in your report, is it?

1 A. I don't believe it is.

2 Q. Not in your report where you laid out your opinions.

3 You didn't focus on this document, did you?

4 A. No.

5 Q. And you didn't focus on the 10-K of T-Mobile where they
6 said they were re-farming spectrum because they had switched
7 to VoLTE?

8 A. Correct.

9 Q. You didn't cite that document in the body of your
10 report, did you?

11 A. Correct.

12 Q. So IV, T-Mobile, Ericsson are sitting in the room.
13 Cards are on the table. IV has these documents. T-Mobile,
14 maybe they're sitting in the back of the room. Ericsson has
15 documents, right?

16 A. Right.

17 Q. The indemnity agreement is on the table?

18 A. I'll -- I'll give you that. If you think it's relevant,
19 it's on the table.

20 Q. And they're going to be locked in that room, and they
21 have to come out with an agreement, right?

22 A. They do.

23 Q. And you're telling the jury that IV is going to sign a
24 deal that says, we'll take \$110,000.00 to give T-Mobile a
25 license to these patents to save billions on spectrum and

1 move voice to LTE?

2 A. Well, I -- you've got a lot loaded up in the question
3 there. I think it's certainly my opinion that the -- as I
4 indicated, that the outcome of that negotiation will be no
5 higher than 1.4 million and that 1.4 million would get the
6 deal done.

7 As to whether the premise of that negotiation --
8 certainly the things you said would be facts that would
9 inform or -- or opinions that would inform the -- the
10 negotiation.

11 Q. And you're saying IV would walk out of the room
12 accepting 110,000 to 1.4 million?

13 A. Absolutely.

14 MR. WARD: Pass the witness.

15 THE COURT: All right. Redirect, Mr. Rubenstein?
16 Stein. I'm sorry.

17 MR. RUBENSTEIN: Thank you, Your Honor.

18 REDIRECT EXAMINATION

19 BY MR. RUBENSTEIN:

20 Q. Dr. Becker, is it your understanding that here in this
21 case, there is an individual inventor that has come to
22 Ericsson and T-Mobile seeking a royalty?

23 A. No.

24 Q. Now, Dr. Becker, you mentioned, in response to some of
25 Mr. Ward's questions, that -- you said that the amount of

1 use of the Defendants was one factor into your analysis.

2 Did I get that right?

3 A. Correct.

4 Q. Would you please explain how that factored into your
5 analysis.

6 A. Well, it's one factor out of many. It's one of the
7 Georgia-Pacific factors. There's 15 factors. And that gets
8 factored in, in part the -- T-Mobile's market share we saw
9 as one critical factor.

10 If T-Mobile had been twice as successful as they
11 have in deploying their network and attracting subscribers,
12 they would have more market share, and it would result in a
13 higher royalty in my analysis.

14 If they had fallen flat on their face and had not
15 grown their network or their subscriber base -- we saw a
16 chart from Mr. Bratic that showed they did a 4X growth --
17 then that would be taken into account.

18 So it's -- the extent of use is, in effect -- the
19 way I take it into account is no different than the way
20 Mr. Bratic takes it into account in his analysis.

21 Q. Now, Dr. Becker, do you remember a -- a series of
22 questions that Mr. Ward asked you in connection with the
23 bankruptcy auction in which these three asserted patents and
24 others were acquired?

25 A. Yes.

1 Q. And do you remember the discussion about the timing of
2 when the \$1 million authorization was given as compared to
3 when it was perhaps discovered later that there were more
4 assets to be had?

5 A. Yes.

6 Q. Now, Dr. Becker, if the jury were to conclude that your
7 \$1.4 million number -- reasonable royalty and your range was
8 the right number, and even if we can assume that IV got a
9 good deal for the -- the group of patent assets that it --
10 that it acquired, would that \$1.4 million number still be a
11 blockbuster return for IV on those three patents?

12 A. It would.

13 Q. And could you explain sort of the order of magnitude?

14 A. Well, it -- the -- the analysis that I've done is
15 already -- it's based on a 14.71 revenue ratio, which is
16 a -- gosh, it's like a 14 -- 1400 percent return on the
17 acquisition.

18 So 14 times what was paid -- more than 14 times
19 what was paid. So even if they got a good deal, it's still
20 around five times higher than the -- than the average for
21 the entire fund. This is still a very good outcome.

22 MR. RUBENSTEIN: Now, Your Honor, I believe I have
23 to have the courtroom sealed for these last few questions,
24 please.

25 THE COURT: Are you requesting that the Court seal

1 the courtroom?

2 MR. RUBENSTEIN: Yes, Your Honor.

3 THE COURT: Based on counsel's request and the
4 representation that there are confidential and proprietary
5 matters to be discussed, I'll order the courtroom sealed.

6 Those present not subject to the protective order
7 should be excused at this time and remain outside the
8 courtroom until it's unsealed.

9 We have an exception you would like to request,
10 Mr. Ward?

11 MR. WARD: To the extent that it's IV's
12 confidential information, we'd ask that IV personnel be
13 excepted.

14 MR. RUBENSTEIN: It is. And no objection.

15 THE COURT: Then we'll proceed on that basis.

16 (Courtroom sealed.)

17 (Sealed Portion No. 9 saved in separate sealed
18 transcript.)

19 (Courtroom unsealed.)

20 THE COURT: And with that, ladies and gentlemen of
21 the jury, you're excused until tomorrow morning.

22 COURT SECURITY OFFICER: All rise.

23 (Jury out.)

24 THE COURT: All right. Counsel, it is roughly a
25 quarter until 2:00. I'm going to take about a 15-minute

1 recess. When I return, I will take up any motions under
2 Rule 50(a) that either Plaintiff or Defendant care to offer.

3 So with that in mind, we stand in recess.

4 COURT SECURITY OFFICER: All rise.

5 (Recess.)

6 (Jury out.)

7 COURT SECURITY OFFICER: All rise.

8 THE COURT: Be seated, please.

9 All right. The Court is prepared to go forward and
10 take up motions from either Plaintiff or Defendant brought
11 under Federal Rule of Civil Procedure 50(a).

12 Let me mention that it is my typical practice that
13 if counsel for any of the parties would -- well, let me say
14 it another way.

15 Those of you that are going to present closing
16 arguments and you have other counsel present who can handle
17 these motions and perhaps handle the discussions with regard
18 to the charge and verdict, you're welcome to participate,
19 but you're not required to.

20 If you can use your time better preparing for your
21 closing arguments, then -- and your side of the case is
22 covered by other capable counsel, you're not required to be
23 here.

24 I assume that's going to be Mr. Ward, Mr. Black,
25 and Mr. Kubehl, and Mr. Rubenstein?

1 MR. RUBENSTEIN: If I may be excused, as well, that
2 would be --

3 THE COURT: Are you going to be doing part of the
4 closing argument?

5 MR. RUBENSTEIN: I don't think so. I'm happy to
6 stay.

7 THE COURT: You just want to get out of the trap?

8 MR. RUBENSTEIN: I'm happy to stay if that's Your
9 Honor's wish.

10 THE COURT: Well, the general rule is as long as
11 the case is covered --

12 MR. RUBENSTEIN: We believe it's covered.

13 THE COURT: -- then other counsel who are not
14 needed to cover it, don't have to be here.

15 MR. KUBEHL: Thank you, Your Honor.

16 MR. RUBENSTEIN: Thank you, Your Honor.

17 THE COURT: All right. Let's proceed with any
18 motions to be brought under Federal Rule of Civil Procedure
19 50(a).

20 Does Plaintiff have any motions under that
21 particular rule at this time?

22 MR. FLANNERY: Yes, Your Honor.

23 THE COURT: If you'd go to the podium and let me
24 hear a recital of the particular motions. I'll hear
25 argument later. But I want to identify them at this point,

1 Mr. Flannery.

2 MR. FLANNERY: You want me to just express the
3 motion?

4 THE COURT: Yes.

5 MR. FLANNERY: Okay.

6 THE COURT: We'll come back and hear the underlying
7 argument.

8 MR. FLANNERY: Okay. May it please the Court, Your
9 Honor.

10 Under Federal Rule of Civil Procedure 50(a), IV
11 would move for judgment as a matter of law now that the
12 Defendant has been fully heard on its defenses in this case,
13 and IV moves for judgment as a matter of law on Defendants'
14 invalidity claims of anticipation and obviousness.

15 IV also moves under Rule 50(a) for judgment as a
16 matter of law that no non-infringing alternatives exist for
17 all of the asserted claims of the patents-in-suit.

18 THE COURT: Are there other motions under Rule
19 50(a) that Plaintiff wishes to bring?

20 MR. FLANNERY: No, Your Honor.

21 THE COURT: All right. Defendants, what matters
22 under Rule 50(a) do you wish to urge?

23 MS. DREYER: Yes, Your Honor. Lauren Dreyer on
24 behalf of Defendants.

25 Defendants move for judgment under Rule 50(a) of

1 non-infringement of the '206, '517, and '629 patents as a
2 matter of law because IV has not presented a legally
3 sufficient evidentiary basis for a reasonable jury to find
4 infringement of any asserted claims.

5 THE COURT: All right. What else?

6 MS. DREYER: Defendants also move for judgment
7 under Rule 50(a) of non-infringement of -- non-infringement
8 of the '206, '517, and '629 patents as a matter of law
9 because IV has not presented a legally sufficient
10 evidentiary basis for a reasonable jury to find indirect
11 infringement of any of the asserted claims.

12 THE COURT: All right. So you're moving for
13 judgment as a matter of law on both direct and indirect
14 infringement. What else?

15 MS. DREYER: Yes, Your Honor.

16 We also move for judgment as a matter of law of no
17 damages because IV has not presented a legally sufficient
18 evidentiary basis for a reasonable jury to find any
19 infringement damages.

20 THE COURT: All right. What else?

21 MS. DREYER: Final -- the last two, Defendants move
22 for judgment under Rule 50(a) of anticipation as a matter of
23 law for the '206 and '517 patents because there's no legally
24 sufficient evidentiary basis for a reasonable jury to find
25 the asserted claims not anticipated.

1 THE COURT: And do you have anything else?

2 MS. DREYER: Yes, Your Honor. One more.

3 Defendants move for judgment under Rule 50(a) of
4 obviousness as a matter of law for the '206, '517, and '629
5 patents because there's no legally sufficient evidentiary
6 basis for a reasonable jury to find the asserted claims not
7 obvious.

8 THE COURT: Does that conclude Defendants' proffer
9 with regard to Rule 50(a)?

10 MS. DREYER: Yes, Your Honor.

11 THE COURT: All right. Well, it's clear that both
12 Plaintiff and Defendants have diametrically opposed motions
13 under Rule 50(a) with regard to the validity issue.

14 Plaintiff seeking judgment as a matter of law that
15 there is no invalidity.

16 And Defendants seeking judgment as a matter of law
17 that there is invalidity, both based on anticipation and
18 obviousness.

19 So I'll hear competing arguments on those opposed
20 motions first, and then we'll take up the others.

21 Since Defendant is at the podium, I'm happy to hear
22 targeted argument on those matters at this time.

23 MS. DREYER: Yes, Your Honor. So --

24 THE COURT: And if you're going to refer to your
25 notes and read, please slow down.

1 MS. DREYER: Yes, Your Honor, I will.

2 For anticipation, Defendants move for judgment
3 under 50(a) of anticipation for the '206 and '517 patents.

4 The facts show that each of the elements of those
5 patents are present in the prior art that has been admitted
6 into evidence, and, therefore, there is no legally
7 sufficient evidentiary basis for a reasonable jury to find
8 the asserted claims not anticipated as the law is clear that
9 anticipation must be found where the accused elements are
10 present in the prior art.

11 THE COURT: Let me hear a responsive argument from
12 Plaintiff.

13 MR. FLANNERY: Your Honor, Plaintiff opposes the
14 motion on the grounds that there's legally sufficient
15 evidence in the record to show that Defendants have failed
16 to satisfy their burden to prove that each and every element
17 of the asserted claims is found in the prior art reference
18 as presented.

19 THE COURT: All right. Do you have any argument in
20 is support of that -- additional argument?

21 MR. FLANNERY: Your Honor, the -- Dr. Acampora did
22 not prove that each of the asserted claims -- that each
23 element of the asserted claims is found in the prior art
24 references of record.

25 THE COURT: Anything further?

1 MR. FLANNERY: No, Your Honor.

2 THE COURT: All right. Well, with regard to the
3 competing motions under Rule 50(a) regarding the topic of
4 invalidity, the Court denies both Plaintiff's and
5 Defendants' motions regarding invalidity brought under
6 Rule 50(a).

7 Defendant has also urged judgment as a matter of
8 law under Rule 50(a) regarding non-infringement, both based
9 on direct and indirect theories of infringement.

10 Let me hear argument from Defendant on that,
11 please.

12 MS. DREYER: Yes, Your Honor. And just as a point
13 of clarification, in -- our previous argument was for our
14 motion for judgment as a matter of law on anticipation.
15 Defendants had also moved, as I stated earlier, for judgment
16 as a matter of law on obviousness with regards to all
17 patents. I just wanted to --

18 THE COURT: And my ruling, by using the broader
19 term "invalidity," encompasses both the included theories of
20 anticipation under 102 and obviousness under 103.

21 MS. DREYER: Thank you, Your Honor. I just wanted
22 to clarify for the record.

23 THE COURT: And in both instances as to both
24 parties, it's denied.

25 MS. DREYER: Thank you, Your Honor.

1 THE COURT: Let me hear your arguments regarding
2 non-infringement, both direct and indirect.

3 MS. DREYER: Yes. The law is clear, Your Honor,
4 that infringement cannot be found where the accused
5 activities do not meet one or more limitations of the
6 claims.

7 All of the asserted patent claims for the '206
8 patent require end-user quality of service requirements.
9 However, the facts show that only T-Mobile determines
10 quality of service requirements, which are network quality
11 of service requirements, not end-user quality of service
12 requirements.

13 All of the asserted '206 patent claims also require
14 classifying a plurality of packets according to end-user
15 quality of service requirements of said plurality of
16 packets.

17 However, the facts show that Ericsson's base
18 stations do not know the quality of service of the
19 individual packets flowing inside their tunnel and cannot
20 classify packets according to the quality of service
21 requirements of said plurality of packets.

22 Therefore, one or more elements of the asserted
23 claims of the '206 patent are not met, and infringement must
24 be found as a matter of law.

25 All of -- Your Honor, would you like me to do all

1 three patents at this time?

2 THE COURT: Yes.

3 MS. DREYER: All of the asserted '517 patent claims
4 require communications with a customer premises equipment,
5 CPE station, which the Court construed as devices residing
6 on the premises of a customer and used to connect to a
7 telephone network, including ordinary telephones, key
8 telephone systems, PBX's, videoconferencing devices, and
9 modems.

10 However, the facts show that the Ericsson base
11 stations only communicate with mobile devices.

12 All of the asserted '517 patent claims also require
13 the step of allocating the shared wireless bandwidth between
14 the wireless base station transmitting in the downlink
15 direction and the at least one CPE station transmitting in
16 the uplink direction based on the analyzed contents and the
17 analyzed reservation requests.

18 However, the facts show that T-Mobile uses separate
19 uplink and downlink bandwidths that are not shared bandwidth
20 allocated between the uplink and downlink directions and
21 cannot allocate based on the analyzed contents and the
22 analyzed reservation requests.

23 Finally, all of the asserted '517 patent claims
24 require the steps of analyzing content of packets to be
25 communicated over the shared wireless bandwidth in a

1 downlink direction.

2 However, the facts show that the information IV
3 accused as the analyzed content is not wirelessly
4 communicated in the downlink direction.

5 Therefore, one or more elements of the asserted
6 claims of the '517 patent are not met, and the '517 patent
7 is not infringed as a matter of law.

8 All of the asserted '629 patent claims require two
9 steps, the steps of reserving a slot for a data pack -- data
10 packet in a future transmission frame, and reserving another
11 slot for another data packet in a transmission frame
12 subsequent in time to the future transmission frame.

13 However, the facts show that use of the accused
14 equipment does not perform those steps because the accused
15 Ericsson base station can only allocate a transmission time
16 interval in the current transmission frame and cannot
17 allocate anything in any future time frame.

18 All of the asserted '629 patent claims also require
19 the step of placing packets in slots of future frames in an
20 isochronous manner. The Court construed in an isochronous
21 manner to mean according to a consistent time interval.

22 However, the facts show that use of the accused
23 equipment does not perform that step because the accused
24 Ericsson base stations send packets randomly or irregularly
25 and not according to a consistent time interval.

1 Therefore, one or more elements of the '629 patent
2 claims, are not met and infringement must be found as a
3 matter of law.

4 THE COURT: Non-infringement.

5 MS. DREYER: Sorry. Excuse me. Thank you, Your
6 Honor.

7 Non-infringement must be found as a matter of law.

8 Finally, with regard to indirect infringement, IV
9 has not presented a legally sufficient evidentiary basis for
10 a reasonable jury to find indirect infringement of any of
11 the asserted claims of the '206, '517, and '629 patents, at
12 least because the facts show that T-Mobile does not directly
13 infringe the asserted claims.

14 Indirect infringement also requires certain
15 elements, including knowledge of the patent, specific intent
16 to cause infringement, or lack of substantial non-infringing
17 uses.

18 IV has not presented a legally sufficient
19 evidentiary basis for a reasonable jury to find any of these
20 elements of indirect infringement have been met.

21 Thank you, Your Honor.

22 THE COURT: Thank you.

23 Let me hear a response from Plaintiff.

24 MS. FAIR: Your Honor, as to non-infringement, I'll
25 start with the '206.

1 The challenged claims were no end-user quality of
2 service. We had Dr. Williams on the stand. He testified
3 that the end-user quality of service is represented in the
4 QCI values. He testified that that meets that claim
5 limitation. And so we have met our burden of proof.

6 A reasonable jury could conclude that that
7 limitation -- that packets be classified based on their
8 end-user quality of service is met through the infringing
9 systems.

10 Second, the Defendants argued that the packets are
11 not classified, but, instead, the packets are placed in
12 bearers.

13 Dr. Williams and Dr. Chrissan testified that
14 packets are addressed by the schedulers in the eNodeB's, and
15 at least on that evidence, if not more, a reasonable jury
16 could conclude that the '206 patent is infringed by the
17 Defendants in this case.

18 As to the '517 patent, the Defendants challenged
19 that the claim limitation addressing customer premises
20 equipment, CPE, is not met. As the Court knows, there was a
21 dispute about whether or not mobile stations fall under that
22 definition.

23 Dr. Williams, the Plaintiff's infringement expert,
24 testified as to how customer premises equipment are met by
25 the mobile devices that are used in T-Mobile's network. And

1 based on that, there is sufficient evidence for a reasonable
2 jury to conclude that that claim limitation addressing
3 customer premises equipment is met in this case.

4 Second, the Defendants challenge the claim
5 limitation of allocating between the uplink and downlink in
6 the '517 patent. The Defendants are asserting an argument
7 that I think we saw starting with claim construction, that
8 this allocation has to be dynamic.

9 We had expert testimony that showed that the claim
10 does not require that, and that the Defendants' systems do,
11 in fact, allocate between the uplink and the downlink, that
12 the schedulers work together. They pass information
13 together on the PDCCH, and, therefore, there is
14 allocation -- at least on that basis, a reasonable jury
15 could conclude that the '517 patent is infringed.

16 Lastly, as to the '629 patent, the Defendants have
17 challenged first that the reservation limitations cannot be
18 met because they don't happen in the future. The grants
19 occur every TTI.

20 Dr. Williams testified that the reservations do
21 happen in the future because as the DBS-SABE-DRX
22 functionality works, the system is looking at packets that
23 are going to be arriving from the user equipment. And
24 though the grants happen every TTI, the reservations occur
25 before that, and, therefore, the reservations occur in the

1 future.

2 Lastly, the Defendants challenged the claim
3 limitation that requires the packets be placed in an
4 isochronous manner. We had testimony both from Dr. Williams
5 and Dr. Chrissan that these packets, when the user equipment
6 is in voice mode, are generated every 20 milliseconds. They
7 are placed and sent to the -- to the base station every 40
8 milliseconds. And, therefore, that occurs at a consistent
9 time interval.

10 And, indeed, Dr. Wicker admitted that that only has
11 to happen once, and that, indeed, it does happen in the
12 Defendants' system, that the packets are placed every --
13 every 40 milliseconds, and, therefore, there is sufficient
14 evidence in the record for a reasonable jury to conclude
15 that the '629 patent is infringed by the Defendants'
16 allegedly infringing services.

17 As to indirect infringement, the first challenge
18 was based on there being no direct infringement. And for
19 the same reasons that we've already presented, there is
20 sufficient evidence for a reasonable jury to conclude that
21 there is direct infringement.

22 As to knowledge of the patent, Ericsson became
23 aware -- indirect infringement is Ericsson. And Ericsson
24 was aware of the patent and that the allegedly infringing
25 activity does infringe the patent as of the filing date of

1 the complaint. And we have presented evidence that -- that
2 they continued in their infringement after that.

3 And, lastly, as to the lack of non-infringing
4 substitutes, there is testimony from Dr. Williams that there
5 are no non-infringing alternatives. There's no other way to
6 do this in the standard. And that -- and that evidence is
7 uncontroverted.

8 Dr. Wicker did not present any evidence of
9 non-infringing alternatives. And based on all of that,
10 there is sufficient evidence for a reasonable juror to
11 conclude that there is indirect infringement in this case.

12 And for those reasons, the Defendants' motion for
13 judgment as a matter of law under Rule 50 on both direct
14 infringement and indirect infringement should be denied.

15 THE COURT: What's Plaintiff's opposition to the
16 motion with regard to contributory infringement?

17 MS. FAIR: Your Honor, I believe the challenge on
18 that was based on a lack of alternate ways to do it,
19 non-infringing, substantive ways to do it. And we had
20 evidence from Dr. Williams that there is no other way to do
21 this in their system.

22 THE COURT: And it's Plaintiff's position that the
23 knowledge requirement of both the patents and the infringing
24 nature of the accused products is something that can be
25 conferred by the filing of the complaint and that knowledge

1 prior to the filing of the complaint is not necessary to
2 support infringement by inducement or contributory
3 infringement?

4 MS. FAIR: I'm not sure I understand the Court's
5 question. The --

6 THE COURT: Well, according to the evidence as
7 I heard it, there was no evidence to support knowledge by
8 the accused indirect infringer prior to the filing of the
9 complaint. And my question is: Is knowledge conferred by
10 the filing of the complaint where that's the sole source of
11 knowledge adequate to support contributory and/or induced
12 infringement?

13 MS. FAIR: Yes, Your Honor.

14 THE COURT: Do you have any authority for that,
15 counsel?

16 MS. FAIR: Your Honor, I would like a moment to
17 confer with my co-counsel.

18 THE COURT: All right.

19 MS. FAIR: Your Honor, I wanted to seek
20 clarification before I spoke out of turn. I was confirming
21 that, in fact, the indirect infringement claims are starting
22 at the time of the filing of the complaint.

23 The direct infringer here is T-Mobile, and so
24 T-Mobile's use doesn't require knowledge of the patent. The
25 direct use of the method claims doesn't require knowledge.

1 Ericsson, as the indirect infringer, their indirect
2 infringement begins at the time of the filing of the
3 complaint when we provided detailed notice of allegations of
4 what infringes -- of what the patent's claim and what
5 technology infringes that.

6 THE COURT: But in this case, the Plaintiff alleges
7 direct infringement against both Ericsson and T-Mobile,
8 correct?

9 MS. FAIR: Yes, Your Honor. The direct
10 infringement is based on the testing of the systems by
11 Ericsson.

12 THE COURT: All right. Do you have any other
13 argument on the infringement -- non-infringement topic?

14 MS. FAIR: No, Your Honor.

15 THE COURT: All right. Well, based on Defendants'
16 arguments seeking judgment as a matter of law under
17 Rule 50(a) with regard to non-infringement based on theories
18 of both direct and indirect infringement with the indirect
19 infringement asserted against Ericsson and the arguments in
20 response from Plaintiff, the Court denies the Defendants'
21 motion for judgment as a matter of law regarding both direct
22 and indirect non-infringement.

23 Let me hear Defendants' arguments briefly on their
24 theory of judgment as a matter of law regarding no proof of
25 damages.

1 MS. DREYER: Thank you, Your Honor.

2 Defendants move for judgment as a matter of law of
3 no damages because IV's only damages' theory applies a
4 royalty rate to a royalty base of the entire number of
5 subscriber months corresponding to base -- base stations
6 with many features other than those accused.

7 IV failed to offer substantial evidence of a proper
8 apportionment of that royalty base to the accused features,
9 as required by law.

10 IV's damages theory is, therefore, contrary to the
11 legal requirement of apportionment and should be rejected as
12 a matter of law.

13 THE COURT: Response by Plaintiff?

14 MS. HENRY: Your Honor, Plaintiff presented
15 evidence from Dr. -- from Mr. Bratic [sic] walking the jury
16 through his analysis for damages which included reviewing in
17 detail Ericsson's own licenses to related LTE technology and
18 then comparing those licenses -- Ericsson's technology to
19 the -- to the three patents-in-suit based on the technical
20 analysis and comparability provided by Dr. Chrissan. That
21 is the apportionment. It's perfectly appropriate in this
22 case, and, therefore, there is sufficient evidence for a
23 reasonable jury to conclude for damages.

24 THE COURT: All right. Well, with regard to
25 Defendants' motion under Rule 50(a) of the Federal Rules of

1 Civil Procedure, seeking judgment as a matter of law with
2 regard to the issue of damages, that motion is denied.

3 Also, for -- out of an abundance of caution and to
4 be completely clear in the record, the Court's denial of the
5 Defendants' motion regarding both direct and non -- direct
6 and indirect infringement covers the issue of no
7 non-infringing alternatives, as well, though I may not have
8 said that in my ruling.

9 Whatever theories have been urged to support
10 Defendants' motion for non-infringing -- for
11 non-infringement, both direct and indirect, are denied under
12 Rule 50(a).

13 All right. That appears to leave Plaintiff's
14 motion for judgment as a matter of law regarding no
15 non-infringing alternatives. Have we already covered that,
16 or does that need to be addressed further?

17 MS. HENRY: Your Honor, I believe the issue with
18 respect to the Defendants' burden from a damages's
19 perspective to prove the existence of non-infringing
20 alternatives, it -- it may have been covered, but if Your
21 Honor will allow me to elaborate just to clarify the record
22 and ensure that we're -- that -- that we've dotted all our
23 i's and crossed our t's.

24 THE COURT: Your elaboration is permitted.

25 MS. HENRY: Thank you, Your Honor.

1 So no non -- non-infringing alternatives is an
2 element of damages for which Defendants bear the burden of
3 proof.

4 Plaintiff put on evidence from Dr. Williams that
5 from a technical perspective, there are no non-infringing
6 alternatives.

7 Plaintiff then put on testimony from Mr. Bratic
8 that from an economic perspective and relying on the
9 technical opinions from Dr. Williams, there are, in fact, no
10 non-infringing alternatives for the patents-in-suit.

11 Now, Dr. Wicker, Defendants' expert, provided
12 absolutely no evidence at all in this trial about the
13 existence of non-infringing alternatives, and neither did
14 Defendants' damages expert, Mr. Bratic. And, therefore,
15 there is absolutely no evidence in the record of the
16 existence of non-infringing alternatives and nothing that a
17 reasonable jury could rely in order to find there was such.

18 THE COURT: Is there a response from Defendants?

19 MS. DREYER: Defendants disagree. Dr. Jorgensen
20 testified that there were many alternatives in the field,
21 and, therefore, their -- IV has not met their burden to show
22 no substantial non-infringing uses.

23 THE COURT: All right. Well, with regard to the
24 Plaintiff's motion for judgment as a matter of law under
25 Rule 50(a) relating to no non-infringing alternatives, that

1 motion is denied.

2 Are there other matters raised by either party
3 under Rule 50(a) that have not been addressed or ruled on by
4 the Court?

5 MR. FLANNERY: No, Your Honor, not from Plaintiff.

6 MS. DREYER: No, Your Honor.

7 THE COURT: All right. One other matter, counsel.

8 The determination of a priority date -- a patent's
9 priority date is purely a question of law if the facts
10 underlying that determination are undisputed. This case
11 presents no disputed facts or issues of facts relevant to
12 the District Court's determination.

13 Defendants presented no argument as to whether the
14 omission of the specification in the filing of the '218
15 patent was intended -- was intentional, and, therefore, the
16 Court has no basis to find that the PTO erred in restoring
17 the July 10, 1998 filing date.

18 Accordingly, the Court determines as a matter of
19 law that the priority date for the '218 patent, and,
20 therefore, the '206 patent is July the 10th, 1998.

21 Now, at this point, I would invite counsel for all
22 the parties to meet the Court in chambers at which time I
23 intend to conduct a fulsome and far-reaching -- far-ranging
24 informal charge conference to discuss the latest suggested
25 final jury instruction and verdict form and pay particular

1 attention to the language that is disputed between the
2 parties.

3 And it's my intention to hear openly and informally
4 from both Plaintiff and Defendants, and then having the
5 benefit of that input and an opportunity to reflect upon it,
6 the Court intends to generate what it considers to be the
7 resulting final jury charge and verdict form.

8 And when that is done, it's my intention to deliver
9 that to counsel for the parties with an opportunity to
10 review it. And after that opportunity to review it, to
11 conduct a formal charge conference on the record where any
12 objections either side believes are appropriate and
13 necessary for the interest of their client can be made and
14 urged.

15 All right. Also, counsel, we need to not forget to
16 cover in the record those items from the list of
17 pre-admitted exhibits used during today's portion of the
18 trial. Are those particulars known to the parties at this
19 time, or do you need time to reflect and review your notes
20 before making an offer into the record?

21 MS. HENRY: I believe some additional time would be
22 beneficial, Your Honor.

23 MS. SMITH: Agreed, Your Honor.

24 THE COURT: All right. I see no reason why we
25 can't do that on the record in the morning before I bring

1 the jury in and begin to give them my final instructions.

2 MS. SMITH: Thank you.

3 THE COURT: Be prepared to do that first thing in
4 the morning.

5 MS. HENRY: Thank you, Your Honor.

6 MS. SMITH: Yes, Your Honor.

7 THE COURT: All right. All right. The -- the
8 Court stands in recess.

9 COURT SECURITY OFFICER: All rise.

10 Ms. Smith?

11 MS. SMITH: I apologize, Your Honor. I wanted to
12 bring it to the Court's attention that I believe the
13 Defendants had requested a bench trial on the issue of
14 claim -- claim preclusion, and we're withdrawing that
15 defense.

16 THE COURT: All right.

17 MS. SMITH: I didn't know the right time to alert
18 the Court of that, but...

19 THE COURT: There's never a wrong time to withdraw
20 something.

21 MS. SMITH: Thank you. I appreciate that. Thank
22 you.

23 THE COURT: And the Court's already given you its
24 ruling on the 101 issue?

25 MS. SMITH: Yes.

1 THE COURT: So the Court does not anticipate that
2 there are matters that would require a bench trial after the
3 return of the jury's verdict.

4 MS. SMITH: That's certainly our -- our feeling,
5 Your Honor.

6 THE COURT: All right. And I'm not sure that it
7 matters, but -- at this juncture, but, Ms. Henry, you cited
8 to Mr. Bratic in your argument. I think you meant
9 Dr. Becker, but I've already ruled.

10 MS. HENRY: Oh, I apologize, Your Honor. Yes,
11 if -- if I was referring to Defendants' expert, I certainly
12 intended to say Dr. Becker.

13 THE COURT: And I'll also note, as advised, after
14 my preliminary instructions were given to the jury, I
15 understand that Plaintiffs have dropped their willfulness
16 claim.

17 MS. HENRY: Yes, Your Honor.

18 THE COURT: All right. Take five minutes to gather
19 your things and meet me in chambers, and we'll then conduct
20 an informal charge conference.

21 The Court stands in recess.

22 COURT SECURITY OFFICER: All rise.

23 (Recess.)

24 (Jury out.)

25 COURT SECURITY OFFICER: All rise.

1 THE COURT: Be seated, please.

2 The Court has conducted an informal charge
3 conference with counsel for all the parties in chambers.
4 The Court has reviewed the latest submitted -- jointly
5 submitted proposed final jury instructions and verdict form
6 with counsel and has heard fully and in depth from counsel
7 for both sides as to their areas of disagreement and the
8 reasons and supporting rationales for each of their
9 competing submissions. The Court has taken into account
10 that input.

11 The Court also has entered into discussions and
12 asked questions, and from that process, the Court has now
13 generated what it believes to be an accurate final jury
14 instruction and verdict form. The Court's delivered that to
15 counsel with an opportunity to review it and will now
16 proceed to conduct a formal charge conference on the record.

17 I'd like one person for each Plaintiff and
18 Defendants to go to the podium, and it's my intention to go
19 through these documents on a page-by-page basis, beginning
20 with the final jury instructions. And if during that
21 process we come to a place where you believe something
22 improper has been included or something essential has been
23 omitted or for whatever reason you think you should lodge an
24 objection on the record, you will certainly be free to do
25 so.

1 All right. We'll begin with the final jury
2 instructions, and we'll begin on Page 1.

3 Are there objections from either Plaintiff or
4 Defendant to anything on Page 1 of the final jury
5 instructions?

6 MS. HENRY: No, Your Honor.

7 MS. DREYER: No, Your Honor.

8 THE COURT: Turning to Page 2, are there objections
9 from either party?

10 MS. HENRY: No, Your Honor.

11 MS. DREYER: No, Your Honor.

12 THE COURT: Page 3?

13 MS. HENRY: No, Your Honor.

14 MS. DREYER: No.

15 THE COURT: Page 4?

16 MS. HENRY: No, Your Honor.

17 MS. DREYER: No, Your Honor.

18 THE COURT: Page 5?

19 MS. HENRY: Your Honor, Plaintiff objects to the
20 inclusion of the sentence: However, an expert witness does
21 not include a witness who offers testimony as to that
22 witness's personal knowledge but who does not offer opinions
23 as an expert.

24 Plaintiffs believes that that sentence is confusing
25 and potentially misleading to the jury.

1 THE COURT: All right. That objection is
2 overruled.

3 Are there any other objections on Page 5?

4 MS. HENRY: Not from Plaintiff, Your Honor.

5 MS. DREYER: No, Your Honor.

6 THE COURT: Turning then to Page 6 of the final
7 jury instructions, are there objections from either party?

8 MS. HENRY: No, Your Honor.

9 MS. DREYER: No, Your Honor.

10 THE COURT: Page 7, are there objections?

11 MS. HENRY: No, Your Honor.

12 MS. DREYER: No, Your Honor.

13 THE COURT: Page 8?

14 MS. HENRY: No, Your Honor.

15 MS. DREYER: No, Your Honor.

16 THE COURT: Page 9?

17 MS. HENRY: No, Your Honor.

18 MS. DREYER: No, Your Honor.

19 THE COURT: Page 10?

20 MS. HENRY: No, Your Honor.

21 MS. DREYER: No, Your Honor.

22 THE COURT: Page 11?

23 MS. HENRY: No, Your Honor.

24 MS. DREYER: No, Your Honor.

25 THE COURT: Page 12?

1 MS. HENRY: No, Your Honor.

2 MS. DREYER: No, Your Honor.

3 THE COURT: Page 13?

4 MS. HENRY: Your Honor, Plaintiff objects to the
5 inclusion of the sentence: The asserted claims are not
6 infringed by the sale or manufacture of a product that is
7 merely capable of performing every element or limitation.

8 This is an instruction that has been modified from
9 an instruction that is also given for apparatus claims. We
10 believe that in the context of a case where there are only
11 method claims, it is extraneous and confusing to the jury.

12 THE COURT: All right. That objection is
13 overruled.

14 Are there other objections related to anything on
15 Page 13?

16 MS. HENRY: Not from Plaintiff, Your Honor.

17 MS. DREYER: No, Your Honor.

18 THE COURT: Turning then to Page 14, are there
19 objections from either party?

20 MS. HENRY: No, Your Honor.

21 MS. DREYER: Yes, Your Honor.

22 Defendants object to the failure to include the
23 Defendants' instruction in Docket No. 314-1 regarding
24 Doctrine of Equivalents. Doctrine of Equivalents must be
25 proven on a claim-by-claim basis, and Defendants contend

1 that this instruction fails to inform the jury of that
2 requirement.

3 THE COURT: All right. That objection is
4 overruled.

5 Is there anything else on Page 14 from either
6 party?

7 MS. HENRY: Not from Plaintiff, Your Honor.

8 MS. DREYER: No, Your Honor.

9 THE COURT: Turning then to Page 15, are there
10 objections from either party?

11 MS. HENRY: No, Your Honor.

12 MS. DREYER: No, Your Honor.

13 THE COURT: Page 16?

14 MS. HENRY: No, Your Honor.

15 MS. DREYER: No, Your Honor.

16 THE COURT: Page 17?

17 MS. HENRY: No, Your Honor.

18 MS. DREYER: Yes, Your Honor.

19 Defendants object to the instruction: The priority
20 date for the '206 patent is July 10th, 1998. Defendants
21 contend that the uncontested facts as set forth in its
22 motion for summary judgment on this issue demonstrate that
23 the priority date for the '206 patent is October 24th, 2002,
24 I believe as included in Defendants' instruction in Docket
25 No. 314-1.

1 THE COURT: That objection is overruled.

2 Anything else on Page 17?

3 MS. HENRY: Not from Plaintiff, Your Honor.

4 MS. DREYER: No, Your Honor.

5 THE COURT: Page 18, are there objections?

6 MS. HENRY: Yes, Your Honor.

7 Plaintiff objects to the final phrase in the first
8 paragraph, "you must find that claim invalid." Plaintiff
9 requests that that language should be changed to "you should
10 find that claim invalid."

11 THE COURT: All right. That objection is
12 overruled.

13 Are there other objections on Page 18?

14 MS. HENRY: No, Your Honor.

15 MS. DREYER: No, Your Honor.

16 THE COURT: Turning then to Page 19, are there
17 objections?

18 MS. HENRY: No, Your Honor.

19 MS. DREYER: No, Your Honor.

20 THE COURT: Page 20, are there objections?

21 MS. HENRY: No, Your Honor.

22 MS. DREYER: No, Your Honor.

23 THE COURT: Page 21, are there objections?

24 MS. HENRY: No, Your Honor.

25 MS. DREYER: No, Your Honor.

1 THE COURT: Page 22?

2 MS. HENRY: No, Your Honor.

3 MS. DREYER: No, Your Honor.

4 THE COURT: Page 23?

5 MS. HENRY: No, Your Honor.

6 MS. DREYER: Yes, Your Honor.

7 Defendants object to the failure to include the
8 Defendants' instruction that's provided in Docket No. 314-1
9 regarding the apportionment of damages to the -- I'm sorry,
10 to the patented features.

11 The law of apportionment requires the jury to be so
12 apprised, and this instruction fails to inform the jury of
13 that -- of that requirement.

14 THE COURT: All right. That objection is
15 overruled.

16 Is there anything else on Page 23 from either
17 party?

18 MS. HENRY: No, Your Honor.

19 MS. DREYER: No, Your Honor.

20 THE COURT: Counsel, you will note that beginning
21 at the bottom of Page 23, covering Page 24 and the first
22 half of Page 25, the Court proposes to instruct the jury on
23 all 15 of the Georgia-Pacific factors.

24 Do both sides agree that it's appropriate for the
25 Court to instruct the jury in this case on all 15 factors?

1 MS. HENRY: Yes, Your Honor.

2 MS. DREYER: Yes, Your Honor.

3 THE COURT: All right. Turning from Page 23 to
4 Page 24, are there any objections?

5 MS. HENRY: No, Your Honor.

6 MS. DREYER: No, Your Honor.

7 THE COURT: Page 25, are there any objections?

8 MS. HENRY: No, Your Honor.

9 MS. DREYER: No, Your Honor.

10 THE COURT: Turning to Page 26, are there any
11 objections?

12 MS. HENRY: No, Your Honor.

13 MS. DREYER: Yes, Your Honor.

14 Defendants object to the instruction to the extent
15 it doesn't include the language in the Defendants'
16 instruction in Docket No. 314-1 regarding the fact that the
17 jurors have to find damages on a per-patent basis, as
18 required by law. Therefore, the jury is not being
19 reasonably apprised of that requirement.

20 THE COURT: All right. That objection is
21 overruled.

22 Anything else on Page 26?

23 MS. HENRY: No, Your Honor.

24 MS. DREYER: No, Your Honor.

25 THE COURT: Any objection to anything on Page 27?

1 MS. HENRY: No, Your Honor.

2 MS. DREYER: No, Your Honor.

3 THE COURT: Page 28?

4 MS. HENRY: No, Your Honor.

5 MS. DREYER: No, Your Honor.

6 THE COURT: All right. Page 28 is the final page
7 of the final jury instructions.

8 I'll turn next to the verdict form. We'll begin
9 with Page 1.

10 Is there objection from either party to anything
11 included in the verdict form no Page 1 thereof?

12 MS. HENRY: No, Your Honor.

13 MS. DREYER: No, Your Honor.

14 THE COURT: Turning then to Page 2, is there any
15 objection?

16 MS. HENRY: No, Your Honor.

17 MS. DREYER: No, Your Honor.

18 THE COURT: Page 3 of the verdict form where
19 Question 1 is located, is there any objection?

20 MS. HENRY: Not from Plaintiff, Your Honor.

21 MS. DREYER: Yes.

22 Defendants object because the law requires that the
23 factfinder, the jury here, determine infringement on a
24 per-claim basis. And this instruction fails to provide a
25 spot on the verdict form where the factfinder can make that

1 determination on a per-claim basis under Techsearch v.
2 Intel, 286 F.3d 1360 and other precedent.

3 THE COURT: I've read that case, counsel. I don't
4 believe it supports your position, and your objection is
5 overruled.

6 We'll turn next to Page 4 of the verdict form
7 wherein Question 2 is located.

8 Is there objection from either party to anything
9 located -- or that should be located on this page?

10 MS. HENRY: No, Your Honor.

11 MS. DREYER: No, Your Honor.

12 THE COURT: Turning then to Page 5, are there
13 objections from either party?

14 MS. HENRY: No, Your Honor.

15 MS. DREYER: No, Your Honor.

16 THE COURT: Turning then to Page 6 where Question 3
17 of the verdict form is located, are there objections from
18 either -- any party?

19 MS. HENRY: Not from Plaintiff, Your Honor.

20 MS. DREYER: Yes, Your Honor.

21 Defendants object because the verdict form fails to
22 inform the jury that they need to attribute damages on a
23 per-patent basis as required by law.

24 THE COURT: All right. That objection is
25 overruled.

1 Anything else on Page 6?

2 MS. DREYER: No, Your Honor.

3 THE COURT: We'll turn then to Page 7 of the
4 verdict form, which is the final page of that document. Are
5 there objections from either party?

6 MS. HENRY: No, Your Honor.

7 MS. DREYER: No, Your Honor.

8 THE COURT: All right. Counsel, that completes the
9 formal charge conference in this case.

10 As I mentioned earlier, I will expect
11 representatives of both Plaintiffs and Defendants to be
12 prepared before I bring the jury in in the morning to read
13 into the record the items from the list of pre-admitted
14 exhibits used during today's portion of the trial.

15 Thereafter, it is my intention to bring in the
16 jury, give them this charge, and proceed to have counsel for
17 the parties present their closing arguments.

18 Unless there's something further, we stand in
19 recess until tomorrow morning.

20 COURT SECURITY OFFICER: All rise.

21 (Recess.)

22

23

24

25

CERTIFICATION

I HEREBY CERTIFY that the foregoing is a true and correct transcript from the stenographic notes of the proceedings in the above-entitled matter to the best of my ability.

/s/ Shelly Holmes
SHELLY HOLMES, CSR, TCRR
OFFICIAL REPORTER
State of Texas No.: 7804
Expiration Date: 12/31/20

2/7/19
Date